



United States Department of the Interior
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE
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WEST VALLEY CITY, UTAH 84119

In Reply Refer To
FWS/R6
ES/UT
7-FA-0092

January 22, 2007

Jrc
C/007/0013

Pamela Grubaugh-Littig
Utah Division of Oil, Gas & Mining
1594 West North Temple, Suite 1210
Box 145801
Salt Lake City, Utah 84114-5801

RECEIVED
JAN 24 2007

DIV. OF OIL, GAS & MINING

RE: Lila Canyon Extension of Horse Canyon Mine, Utah American Energy, Inc., Utah State Permit C/007/0013

Dear Ms. Grubaugh-Littig:

This letter conveys the Fish and Wildlife Service (Service) position regarding impacts to migratory birds, specifically golden eagles, from the Lila Canyon extension of the Horse Canyon mine, located in Emery County, near East Carbon and Sunnyside, Utah. Five golden eagle nests are located within approximately 0.5 miles from the surface facility area, and could be subject to disturbance from surface construction activities. In addition, possibly as many as three golden eagle nests are located within the subsidence risk zone and could be impacted by subsidence resulting from underground mining activities.

The Utah Division of Oil, Gas, and Mining (UDOGM) requested (personal communication with Jerriann Ernsten, January 18, 2007) our assistance in order to ensure the proposed project avoids and minimizes take of migratory birds and impacts to their habitat in accordance with the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA). Under authority of the MBTA, it is unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs. Take is defined (50 CFR 10.12) as to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect. The BGEPA provides additional protection beyond the MBTA, prohibiting disturbance or destruction of bald or golden eagle nests at any time.

We believe that the construction disturbance that is proposed to occur with the mine expansion will not be likely to result in take. We make this determination based on the following commitments that have been agreed upon by the mine operator and the agencies (UDOGM, Bureau of Land Management [BLM], Utah Division of Wildlife Resources [UDWR], and the Service) and will be a requirement of the mining permit issued by UDOGM:

- Construction Timing – Construction will not be initiated within 0.5 miles of occupied nest sites during nesting season (February 1 – July 15). Should unforeseen circumstances require that construction be initiated during this period, the mine operator will immediately contact the agencies so that appropriate measures to avoid nest abandonment can be determined. These measures may include but would not be limited to:
 - Development of a mitigation plan;
 - Ground surveys to determine nesting stage;
 - Postponement of construction until eagle nestlings are at a suitable developmental stage.

- Habitat Enhancement – Because the agencies determined that the limiting habitat factor for golden eagles in this area is prey base, the mine operator has committed to 93 acres of habitat enhancement, to be managed by the Bureau of Land Management, to mitigate impacts caused by surface disturbing activities.

The agencies have also discussed the potential for impacts to raptor nest sites related to subsidence that could result from mining activities. Should it be determined that any golden eagle nests are at risk from subsidence, the mine operator will provide, with technical assistance from the agencies, a mitigation plan that will include measures to avoid and minimize the potential for damage to or loss of the nests. The potential need for a Take permit, issued through the Service's Migratory Bird permitting office, would be necessary should the mitigation plan include actions (e.g. fencing or removing the nest) to deter eagles from nesting in an at-risk site.

These measures will provide adequate protection to golden eagle nests while also providing enhancement to habitat components that are currently limiting. In addition, the mine operator has funded and will continue to fund annual fly-over surveys, conducted by the Utah Division of Wildlife Resources, providing data crucial for monitoring this population.

The Service believes that all parties in the project have worked cooperatively to minimize the risk of take of migratory birds as defined by the MBTA and BGEPA, and we appreciate the outstanding coordination.

We commend your efforts to conserve migratory birds, including golden eagles, and their habitat. If you need further assistance, please contact Betsy Herrmann, Ecologist, at the letterhead address or (801) 975-3330, extension 139.

Sincerely,



Larry Crist
Utah Field Supervisor

cc: Steve Rigby – BLM State Office